

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Regina Hicks
To Provide Family Child Care

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on June 11, 2004, at the Dakota County Attorney's Office, Dakota County Judicial Center, 1560 West Highway 55, Hastings, MN. The hearing was completed by noon and the hearing record closed at that time.

Margaret M. Horsch, Assistant County Attorney, 1560 West Highway 55, Hastings, MN 55033-2392, appeared on behalf of the Department of Human Services (Department). Regina Hicks, 3022 West 131st Street, Rosemount, MN 55068-5030, appeared on her own behalf without counsel.

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have ten days to file exceptions to this report.^[1] The Commissioner's final order shall be issued within ten working days from receipt of the administrative law judge's recommendation.^[2] Because of the timelines, the parties are requested to file any exceptions as soon as possible.

STATEMENT OF ISSUE

Should the temporary immediate suspension of Regina Hicks' family child care license remain in effect because reasonable cause exists to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

The Administrative Law Judge concludes that there is reasonable cause for such a belief and that the immediate suspension of the child care license should remain in effect.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Regina Hicks provides licensed family child care from her home in Rosemount, Minnesota. Her family consists of her husband and two children, Shane,

age 19, and Melissa, age 18.^[3] Ms. Hicks has been providing licensed child care since at least 1997.

2. On July 15, 2003, Dakota County Social Services received an anonymous call from the parent of a child who attends Ms. Hicks' daycare. The caller stated that a daycare provider's 18-year-old son had exposed himself to the caller's six-year-old daughter and another seven-year-old girl in care, while the three of them were watching television in the basement of the daycare home. The caller further stated that the six-year-old reported that the man had asked both girls to touch him. Although the six-year-old did not do so, the seven-year-old did. The man told the girls not to tell anyone or they would get a time out.^[4]

3. That same day, Child Protection and the Rosemount Police began an investigation into the call and paid an unannounced visit to Ms. Hicks' home.^[5] When the investigators arrived, a meeting between Ms. Hicks, Shane, and the girls' parents had just ended.^[6] During the meeting, the parents and Ms. Hicks reached an agreement that the parents would not to pursue the matter or press charges and that, in the future, Shane Hicks would not be in the home at any time during daycare hours.^[7] Everyone was aware that Shane Hicks would be leaving within a matter of two weeks to attend U.S. Navy boot camp. Ms. Hicks told the investigators that a parent had reported to her that one of the girls dared the other to touch Shane's private parts, which she did, and then the girl pulled down her own pants.^[8] Child Protection attempted to interview the children and Shane Hicks, but both sets of parents refused to allow interviews with their daughters, and Shane Hicks declined to make a statement.^[9] As a result, Child Protection determined that there was insufficient evidence to determine that maltreatment had occurred. Nevertheless, Ms. Hicks and Child Protection entered into an informal agreement that Shane Hicks would not be present in the home during daycare hours.^[10]

4. At the hearing, Ms. Hicks testified that her son had admitted to the parents that he had behaved inappropriately and apologized for his actions. She testified that she did not know, or want to know, the details of his conduct.^[11]

5. Just before completing boot camp, Shane Hicks was discharged from the Navy and returned home to live with his parents.^[12]

6. On November 24, 2003, while at a residence in Apple Valley, Shane Hicks trapped a 14-year-old girl in a downstairs bathroom with him, kissed her on the neck and face, and reached up her shirt to touch one of her breasts.^[13] On December 23, 2003, Dakota County charged him with Criminal Sexual Conduct in the Fourth Degree and Fifth Degree under Minn. Stat. §§ 609.345, subd. 1(b) and 609.3451, subd. 1(1), respectively.^[14] Shane Hicks remained in jail pending trial on these charges because his mother would not allow him to return home.

7. In January 2004, DCSS licensing worker Maura Johnson came to Ms. Hicks' home for a monitoring visit.^[15] At that time, Ms. Hicks reported that Shane was in jail in Minnesota, but Ms. Johnson was not aware of the nature of the charge.

8. One month later, Ms. Hicks reported to Ms. Johnson that Shane was still in jail. On or about February 2, 2004, Shane's probation officer notified another social worker at DCSS that Shane was charged with criminal sexual conduct.^[16] On February 26, 2004, during a relicensing visit with Ms. Hicks, Ms. Johnson expressed ongoing concerns about Shane being in the home at all and stressed to Ms. Hicks that she must inform her licensing worker if and when Shane planned to return home.^[17]

9. On April 20, 2004, Shane Hicks pled guilty to felony level false imprisonment, and the criminal sexual conduct charges were dismissed.^[18] He was sentenced to time served (99 days) and three years of probation following his release. He is required to complete sex offender treatment, undergo polygraph testing, register with the state as a predatory sex offender, and have no unsupervised contact with the victim or any females under the age of 16.^[19] On the day of his plea, Shane's probation officer reported to Ms. Johnson that Shane had been released from jail and that he had given Ms. Hicks' phone number as contact information.

10. On the evening of April 20, 2004, after daycare children had departed, Ms. Hicks picked up Shane and brought him home. Shane Hicks told her that the sentencing judge had told him he could live in the house but could not be present during daycare hours.^[20] For the next two days, Shane left the house at approximately 6:45 a.m. and did not return until 5:15 p.m.^[21]

11. On April 21, 2004, Ms. Johnson contacted the probation officer to learn Shane's address. Later that day, the probation officer informed Ms. Johnson that Shane was living at his family home.^[22] On April 22, 2004, Ms. Johnson contacted the jail and was informed that Shane had gone from the jail to his parents' home, leaving that address as his contact information.

12. On April 22, 2004, Ms. Johnson prepared a Correction Order documenting Ms. Hicks' failure to inform DCSS about Shane's presence in the home and the need to have him complete an authorization to do a background investigation.^[23]

13. Later that day, Ms. Johnson drafted a letter to the Department in which she recommended that a temporary immediate suspension be issued against Ms. Hicks' license for her failure to report that Shane was back at home and for failure to submit a current background study form.^[24]

14. The Department issued the Order of Temporary Suspension that afternoon, and that evening Ms. Johnson and her supervisor served it on Ms. Hicks.^[25] Ms. Hicks and Shane obtained and completed an Authorization for Background Study that same day, and the county received it on April 23, 2004.^[26]

15. By April 26, 2004, Ms. Hicks had made arrangements for Shane to stay with his godparents.^[27] The Department does not dispute that Shane Hicks no longer resides in the home.

16. Ms. Hicks filed a timely appeal of the temporary immediate suspension order.^[28]

17. The Notice of and Order for Hearing were mailed to Ms. Hicks on May 6, 2004, setting the hearing date for May 27, 2004. At Ms. Hicks' request, the hearing was rescheduled to June 11, 2004.

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subds. 2 & 3, and 14.50.

2. The Commissioner, through Dakota County Social Services, has complied with all substantive requirements.

3. If the Commissioner finds that the health, safety, or rights of the children in care are in imminent danger, the Commissioner shall immediately suspend the license.^[29]

4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the Commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule.^[30]

5. If a license holder appeals an order immediately suspending a license, the Commissioner must request an expedited hearing to take place within 30 calendar days of the request for assignment, unless an extension is requested and granted for good cause.^[31]

6. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings is limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.^[32]

7. The Commissioner demonstrated reasonable cause for the temporary immediate suspension and has shown that it should remain in effect pending a final order because there is a risk of imminent harm to the rights of persons served by the license holder.

8. The Memorandum attached hereto is incorporated herein by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the temporary immediate suspension of Regina Hicks' family child care license.

Dated: June 23, 2004

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (two tapes).

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2000), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Department has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. This is a modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination.

The statute requires that in an expedited hearing concerning an immediate temporary suspension, the scope of the hearing is limited to determining whether the temporary immediate suspension "should remain in effect" pending the commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.08.^[33] The Department is required to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with law or rule "poses an imminent risk of harm" to the health, safety, or rights of children in care.

The County contends it has demonstrated an imminent risk of harm, even though Shane Hicks no longer resides in the home, because of the severity of his past behavior, the danger he poses to children in care, and a mistrust of Ms. Hicks' willingness to accurately report him and his conduct to licensing authorities. The licensing worker stressed the need for Ms. Hicks to inform DCSS as soon as possible if Shane were to be released from jail and return home. Ms. Hicks did not do so, and she was not entitled to rely on her son's incorrect reporting of the conditions of his release.

The licensing worker told Ms. Hicks to inform her if Shane Hicks returned home, and Ms. Hicks should have done so.

Of greater concern to the Administrative Law Judge are the discrepancies between statements Ms. Hicks gave to investigators about the July 2003 incident and her testimony at the hearing. In July 2003, she asserted that the two girls in care had instigated the situation and that her son was not to blame; at the hearing she testified that her son had apologized to the parents for inappropriate conduct but said she did not know, nor did she want to know, what the details were. This discrepancy raises sufficient doubt, when coupled with Ms. Hicks' failure to notify DCSS of Shane's return home in April 2004, about her willingness to disclose his conduct to licensing authorities. It further tends to suggest that she wishes to remain ignorant about the details of her son's inappropriate behavior toward young girls in her care.

The Administrative Law Judge believes that Ms. Hicks is attempting to protect her son and her daycare children in her own way and that she would not knowingly jeopardize the safety of the children; those children have the right, however, to the protection provided by licensing authorities, and the licensing authorities cannot do their job without reliable information from Ms. Hicks. The evidence in this record is sufficient to support a finding that Ms. Hicks' actions pose an imminent risk of harm to the rights of children in her care.

K.D.S.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 245A.07, subd. 2a(b).

^[3] Ex. 3.

^[4] Ex. 3 and testimony of Maura Johnson.

^[5] Ex. 3.

^[6] Testimony of Regina Hicks.

^[7] *Id.*

^[8] Ex. 3.

^[9] *Id.*

^[10] Testimony of Maura Johnson.

^[11] Testimony of Regina Hicks.

^[12] *Id.*

^[13] Ex. 1.

^[14] *Id.*

^[15] Testimony of Maura Johnson.

^[16] *Id.*

^[17] *Id.*

^[18] Exs. 2 and 4.

^[19] Ex. 2.

^[20] This was the recommendation in the pre-sentence investigation; however, the judge did not impose this condition in sentencing Hicks. See Ex. 10.

^[21] Testimony of Regina Hicks and Ex. 9. Ms. Hicks' daycare hours are from 7:00 a.m. to 5:00 p.m.

^[22] Testimony of Maura Johnson.

^[23] Ex. 12. The Correction Order was not mailed until April 27, 2004.

^[24] Ex. 5.

^[25] Ex. 6.

^[26] Ex. 7.

^[27] Testimony of Maura Johnson.

^[28] Ex. 11.

^[29] Minn. Stat. § 245A.07, subd. 2; Minn. R. 9502.0341, subp. 9.

^[30] Minn. Stat. § 245A.08, subd. 3.

^[31] *Id.* § 245A.07, subd. 2a.

^[32] *Id.*

^[33] Minn. Stat. § 245A.07, subd. 2a.